IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JESSE ROBERTO ACKLES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 16-cv-02101
	)	
CONTRACT CALLERS, INC.,	)	
	)	
Defendant.	)	Jury Demanded

COMPLAINT

Plaintiff, Jesse Roberto Ackles, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the Illinois Collection Agency Act, 225 ILCS 425, et seq. ("ICAA"), and alleges:

VENUE AND JURISDICTION

1. This Court has jurisdiction pursuant to § 1692k(d) of the FDCPA, 28 U.S.C. § 1331, and 28 U.S.C. § 1337 as to Plaintiff's state law claim.

2. Venue is proper in this District because the alleged debt for a residential consumer electric account was incurred here, and Defendant transacts substantial business here.

PARTIES

3. Plaintiff, Jesse Roberto Ackles ("Plaintiff"), is a resident of the State of Illinois, from whom Defendant attempted to collect a delinquent consumer debt allegedly owed for a Comed residential electric debt. Plaintiff is thus a consumer as that term is defined in 15 U.S.C. § 1692a(3) of the FDCPA, and a "debtor" as that term is defined in 225 ILCS 425/2 of the ICAA.

4. Plaintiff is bilingual.

5. Defendant Contract Callers, Inc. (“CCI”) is a Georgia corporation that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or telephone to collect, or attempt to collect, delinquent consumer debts. (Exhibit A, Record from the Illinois Secretary of State).

6. CCI operates a nationwide delinquent debt collection business, and attempts to collect debts from consumers in the State of Illinois.

7. CCI was acting as a debt collector as to the debt it attempted to collect from Plaintiff.

8. CCI holds a collection agency license from the State of Illinois. (Exhibit B, Record from the Illinois Department of Financial and Professional Regulation).

9. CCI acts as a debt collection agency in the State of Illinois.

10. CCI is a collection agency, as that term is defined in the ICAA at 225 ILCS 425/1.

FACTS

11. Plaintiff incurred an alleged debt for services used for personal purposes, originally for a Comed consumer residential electric debt (“alleged debt”) at 2525 North Richmond Street, Chicago, Illinois 60647. The debt is thus a “debt” as defined by 15 U.S.C. § 1692a(5) of the FDCPA.

12. Due to his financial circumstances, Plaintiff could not pay the alleged debt, and it went into default.

13. CCI subsequently acquired or was otherwise assigned the alleged debt.

14. CCI sent Plaintiff a collection letter (“Letter”), dated August 21, 2015. (Exhibit C, Collection Letter).

15. The Letter conveyed information regarding the alleged debt including the creditor, an account number and a total due.

16. The Letter was thus a communication as that term is defined at §1692a(2) of the FDCPA.

17. The Letter stated, in part:

> **Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if dfferent from the current creditor.**

18. The Letter included a translation of Plaintiff's righs:

> **Almenos que ustedes llame a esta oficina dentro de 30 dias de haber recibido este aviso que usted diputa la validad de est deuda o cualquiera porcion de ella esta oficina asumira que esta deuda es valida. Si usted notifica esta oficina por escrito dentro 30 dias de haber receibido este aviso, esta oficina obtendra verificacion de la deuda y le mandara una copia por correo de esta verificacion.**

19. The translation of the Letter failed to notify Plaintiff of his right to obtain the name and address of the original creditor, if different from the current creditor.

20. 15 U.S.C.§ 1692g(a) of the FDCPA provides as follows:

> **(a) Notice of debt; contents**
>
> **Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—**
>
> **. . . (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer**

> **with the name and address of the original creditor, if different from the current creditor. . . .**

21. CCI failed to include a statement in the translation of the Letter that unless the consumer, if he "requests of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if dfferent from the current creditor", in violation of 15 U.S.C. § 1692g(a)(5).

22. It is not enough to provide the information required by § 1692g of the FDCPA; rather, that information must be effectively conveyed, *see*, *Bartlett v. Heibl*, 128 F.3d 497, 500 (7th Cir. 1997); *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols and Clark, L.L.C.*, 214 F.3d 872, 875-876 (7th Cir. 2000); see also, 15 U.S.C. § 1692g(b).

23. CCI provided different notifications of Plaintiff's rights in English and Spanish.

24. 15 U.S.C. § 1692e of the FDCPA provides as follows:

> **False or misleading representations**
>
> **A debt collector may not use any false, deceptive or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section—**
>
> **. . . (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. . . .**

25. CCI made false, deceptive and misleading representations when it provided different notifications of Plaintiff's rights to request the name and address of the original creditor in English and in Spanish, in violation of 15 U.S.C. §§ 1692e and 1692e(10).

26. Plaintiff was confused, as the unsophisticated consumer would be confused, as to the different rights communicated to him in English and Spanish.

27. The Letter directs Plaintiff to visit CCI's website to make a payment at www.myaccount.contractcallers.com.

28. At CCI's direction, Plaintiff went to CCI's website.

29. CCI's website has the following statement:

> **This communication is from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.**
>
> (Exhibit D, CCI Website Home Page).

30. CCI's website requires the consumer to mark that they read and understood the statement before proceeding.

31. CCI's website also requires the consumer to choose their home state before proceeding. (Ex. D, Website).

32. Plaintiff chose his home state of Illinois.

33. After selecting "Continue," the CCI website directs the consumer to a Payment Form. (Exhibit E, CCI Payment Form).

34. CCI's Payment Form states that there is a $5.00 service fee for paying by credit card.

35. The Illinois Collection Agency Act, 225 ILCS 425/9(a)(29), makes unlawful "[c]ollecting or attempting to collect any interest or other charge or fee in excess of the actual debt or claim unless such interest or other charge or fee is expressly authorized by the agreement creating the debt or claim unless expressly authorized by law or unless in a commercial transaction such interest or other charge or fee is expressly authorized in a subsequent agreement. . . ."

36. On information and belief, there is no agreement authorizing such a charge.

37. The $5.00 fee therefore may never be charged under Illinois law.

38. 15 U.S.C.§ 1692f of the FDCPA provides as follows:

> **Unfair practices**

> **A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section—**
>
> **(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. . . .**

39. CCI attempted to collect an amount over and above the original amount of the alleged debt when it attempted to collect a $5.00 service fee for paying by credit card, in violation of 15 U.S.C §§ 1692f and 1692f(1).

40. 15 U.S.C. § 1692e of the FDCPA provides as follows:

> **False or misleading representations**
>
> **A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section—**
>
> **. . . (2) The false representation of—**
>
> **(A) the character, amount, or legal status of any debt . . .**
>
> **. . . (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. . . .**

41. CCI made a false and misleading representation when it represented that a $5.00 service fee for paying by credit card could be charged, over and above the original amount of the alleged debt, in violation of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10).

42. 225 ILCS 425/9(a)(33) of the Illinois Collection Agency Act provides as follows:

> **Collecting or attempting to collect any interest or other charge or fee in excess of the actual debt unless such interest or other charge or fee is expressly authorized by the agreement creating the debt unless expressly authorized by law or unless in a commercial transaction such interest or other charge or fee is expressly authorized in a subsequent agreement. . . .**

43. According to the ICAA, "while a subsequent agreement can authorize a fee in a commercial transaction, by implication, the same is not true for consumer transactions." *Acosta v. Credit Bureau of Napa Cty.*, No. 14 C 8198, 2015 WL 1943244, at *4 (N.D. Ill. Apr. 29, 2015).

44. Defendant attempted to collect other charges or fees in excess of the actual debt or claim without authorization by law or agreement creating the debt, in violation of 225 ILCS 425/9(a)(33) of the Illinois Collection Agency Act.

45. A private right of action exists for violation of the ICAA. *Sherman v. Field Clinic*, 74 Ill. App. 3d 21, 392 N.E.2d 154 (1st Dist. 1979).

46. In fact, statutes providing for administrative remedies (e.g. the revocation of a license, etc.) imply civil rights of action in *Illinois. Trull v. GC Servs. Ltd. P'ship*, 961 F. Supp. 1199, 1206 (N.D. Ill. 1997).

47. Defendant's collection communications are to be interpreted under the "unsophisticated consumer" standard. *See, Gammon v. GC Services, Ltd. Partnership*, 27 F.3d 1254, 1257 (7th Cir. 1994).

COUNT I—FAIR DEBT COLLECTION PRACTICES ACT

48. Plaintiff incorporates the above paragraphs as if set forth fully in this count.

49. CCI failed to include a statement in the translation of the Letter that unless the consumer, if he "requests of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if dfferent from the current creditor", in violation of 15 U.S.C. § 1692g(a)(5).

50. CCI made false, deceptive and misleading representations when it provided different notifications of Plaintiff's rights to request the name and address of the original creditor in English and in Spanish, in violation of 15 U.S.C. §§ 1692e and 1692e(10).

51. CCI attempted to collect an amount over and above the original amount of the alleged debt when it attempted to collect a $5.00 service fee for paying by credit card, in violation of 15 U.S.C §§ 1692f and 1692f(1).

52. CCI made a false and misleading representation when it represented that a $5.00 service fee for paying by credit card could be charged, over and above the original amount of the alleged debt, in violation of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10).

WHEREFORE, Plaintiff asks that the Court enter judgment in his favor and against Defendant CCI as follows:

A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);

B. Statutory damages pursuant to 15 U.S.C. § 1692k(a)(2);

C. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k(a)(3); and

D. Such other or further relief as the Court deems proper.

COUNT II—ILLINOIS COLLECTION AGENCY ACT

53. Plaintiff incorporates the above paragraphs as if set forth fully in this count.

54. Defendants attempted to collect other charges or fees in excess of the actual debt or claim without authorization by law or agreement creating the debt, in violation of 225 ILCS 425/9(a)(33) of the Illinois Collection Agency Act.

WHEREFORE, Plaintiff asks that the Court enter judgment in his favor and against Defendant CCI as follows:

A. Compensatory and punitive damages;

B. Costs; and,

C. Such other or further relief as the Court deems proper.

JURY DEMAND

Plaintiff demands trial by jury.

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